

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 11-cv-2753-PJH

SUZANNE D. JACKSON,

Plaintiff,

v.

WILLIAM FISCHER, et al.,

Defendants.

**ORDER DENYING MOTION FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION**

The motion of defendants Jon Sabes, Steven Sabes, and Marvin Siegel for leave to file a motion for reconsideration of the court's September 21, 2015 order is DENIED. Defendants have not shown that a material difference in fact or law exists from that which was presented to the court before entry of the September 21, 2015 order, or that new material facts have emerged or that the law has changed since entry of the order. See Civ. L.R. 7-9(b)(1), (2). They appear to be attempting to assert that reconsideration is warranted because the court failed to consider dispositive legal arguments that were presented before entry of the order, see Civ. L.R. 7-9(b)(3), but that argument fails.

Defendants claim that the court erred in considering "the evidentiary effect" of the stipulated judgment, because the parties did not brief that issue, and briefed only the "offensive preclusive effect" of the stipulated judgment. They contend that the court improperly concluded that, even though plaintiff failed to meet the heightened pleading requirements of Rule 9(b) and the PSLRA, the stipulated judgment in the adversary proceeding created a factual dispute precluding dismissal. Defendants assert that the

1 court “should reconsider its September 2015 order based on the controlling law holding
2 that stipulated judgments are not sufficient to meet the pleading requirements of the
3 PSLRA, have no evidentiary effect, and are ultimately just inadmissible hearsay.”

4 Defendants have misconstrued the court’s order. In their motion to dismiss,
5 defendants argued that the § 10(b) claims against Fischer should be dismissed for failure
6 to state a claim. Plaintiff’s response was that “the issue” of primary liability against
7 Fischer “has been settled” by virtue of Fischer’s admission in the stipulated judgment that
8 he defrauded plaintiff in the sale of securities in the defendant companies, and that
9 defendants are barred from challenging the § 10(b) primary liability claims against
10 Fischer under the doctrines of collateral estoppel and res judicata.

11 The court denied the motion to dismiss the § 10(b) claims against Fischer for
12 failure to state a claim, but also found that “the judgment in the adversary proceeding
13 does not have a preclusive effect on the § 10(b) claim or on any issue relating to the
14 § 10(b) claim.” Clearly, the court did not find – as defendants claim – that the stipulated
15 judgment “meets the pleading requirements of the PSLRA.”

16 The court did find that the stipulated judgment was sufficient to create an issue of
17 fact as to whether plaintiff can proceed with this claim against Fischer. However, the
18 defendants were not seeking summary judgment. They were challenging the pleadings.
19 The court’s order was issued in relation to a motion to dismiss for failure to state a claim.
20 In that context, to say that there are factual issues that preclude dismissal does not
21 compel a decision with regard to evidentiary proof of the elements of a cause of action. It
22 means that there appear to be factual issues that must be resolved by means of a
23 dispositive motion or a trial, at which time evidence will be presented. Thus, defendants’
24 argument that the stipulated judgment is “inadmissible hearsay” and has “no evidentiary
25 value” is meaningless in the present context.

26 The court also explained that having issued four lengthy orders on the adequacy
27 of the pleadings, it was unwilling to continue the process, and had determined that the
28 case should go forward with discovery and dispositive motions. Part of what factored into

1 the court's decision was Fischer's agreement in the adversary proceeding that he had
2 defrauded plaintiff. While plaintiff's allegation of the fact of that agreement is not
3 sufficient to state a claim of primary liability under the PSLRA, the court is not amenable
4 at this point to dismissing the § 10(b) claim against Fischer with prejudice as defendants
5 apparently would prefer.

6
7 **IT IS SO ORDERED.**

8 Dated: October 7, 2015



PHYLLIS J. HAMILTON
United States District Judge